UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

UNITED STATES OF AMERICA, PLAINTIFF VS. TOBIAS RITESMAN, DEFENDANT	CR 18-40001 PETITION TO PLEAD GUILTY

COMES NOW, the Defendant Tobias Ritesman, by and through counsel, Tom Weerheim and, hereby moves this Court, pursuant to Local Rule 10.1(B), to allow Mr. Ritesman to plea open to Counts 1 through 18 of the Redacted Indictment (Doc 2), which in Counts 1 through 10 charge wire fraud, and Counts 11 through 18 charge mail fraud, and all counts charge aiding and abetting in violation of 18 U.S.C. §1343, 1341, 2.

Mr. Ritesman is entering this plea of guilty without having entered into any plea agreement with the Government. Mr. Ritesman agrees that he has been fully advised of his statutory and constitutional rights herein, and he has also been previously informed of the charges and allegations against him, and that the statutory maximum is twenty (20) years imprisonment per count, and a $250,000 fine per count, or both, and a period of supervised release of 3 years per count, and restitution.

Mr. Ritesman further understands that by entering a plea of guilty to Counts 1 through 18, he will be waiving certain statutory and constitutional rights to which he would otherwise be entitled. In addition, Mr. Ritesman understands that if is found by a preponderance of evidence to have violated a condition of supervised release, he could be incarcerated for an additional term upon revocation of his supervised release.

That in regard to his guilty plea to mail fraud, wire fraud, and aiding and abetting, Mr. Ritesman, believes that in regard to being sentenced for said offense, he would be entitled to a two-level decrease in his offense level pursuant to U.S.S.G. 3E1.1(a).

Furthermore, Mr. Ritesman agrees that the facts contained in his Factual Basis Statement, incorporated herein by this reference, provides the basis for his guilty plea, and is a true

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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
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UNITED STATES OF AMERICA,	CR 18-40001
Plaintiff,	GOVERNMENT'S MOTIONS IN LIMINE
vs.	
TOBIAS RITESMAN and TIMOTHY BURNS,	
Defendants.	

Comes now the United States of America, by and through Assistant United States Attorney Ann M. Hoffman, and submits the following motions in limine for consideration by the Court. Should the need arise to file additional motions in limine, the United States hereby notifies the Court and Defendants that it will promptly submit such motions for the Court's consideration.

1. Reference to Penalty or Punishment. The Government moves the Court in limine for an order precluding the Defendants, their attorneys, or any witness from making any comment or reference, whether direct or indirect, to penalty or punishment in this case. By this motion, the Government seeks to preclude any reference to penalty or punishment at any point in the trial, but in particular, if a defendant chooses to testify, to preclude any questioning related to his "future plans." Penalty, punishment, or ramifications or consequences following imposition of punishment are not relevant in this case. This issue is not within the purview of the jury and should not be referred to either directly or

(ii) preindictment delay;

(iii) a violation of the constitutional right to a speedy trial;

(iv) selective or vindictive prosecution; and

(v) an error in the grand-jury proceeding or preliminary hearing;

(B) a defect in the indictment or information, including:

(i) joining two or more offenses in the same count (duplicity);

(ii) charging the same offense in more than one count (multiplicity);

(iii) lack of specificity;

(iv) improper joinder; and

(v) failure to state an offense;

(C) suppression of evidence;

(D) severance of charges or defendants under Rule 14; and

(E) discovery under Rule 16.

Reed, 641 F.3d 992, 993-94 (8th Cir. 2011) (citations omitted). Any attempt by defense counsel or any witness to present evidence or argument concerning the Government's charging decisions in this case should not be allowed.

5. Hearsay Statements Made by the Defendants Offered By the Defendants. The Government moves the Court in limine for an order precluding the Defendants, their attorneys, or any witness from offering any out-of-court statement by a defendant of what he said regarding his guilt or innocence. Any out-of-court statement offered by a defendant of what he said regarding his guilt or innocence is inadmissible hearsay that does not meet any exception. Federal Rule of Evidence 801(d)(2)(A) allows the admission of a statement made by a party opponent "against" the party opponent. A statement is "not hearsay" when it is offered "against a party" and it is the party's own statement. *United States v. Worman*, 622 F.3d 969, 976 (8th Cir. 2010) (citing Fed. R. Evid. 801(d)(2)(A) and *United States v. Heppner*, 519 F.3d 744, 751 (8th Cir. 2008)). The Defendants should not be allowed to elicit testimony that they made statements to witnesses, outside of court, proclaiming their innocence of the charges in this Indictment. Such statements would be offered by the Defendants not against themselves and would not be admissible under Rule 801(d)(2)(A).

6. Request for Special Agent at Counsel Table.

The United States requests that Special Agent Matthew Miller be allowed to sit at counsel table during trial. Special Agent Miller is the main agent involved in the case, and the United States seeks leave from the sequestration

proceedings, and it seeks leave from the sequestration rule to allow the victims to watch the proceedings and trial. *See* Fed. R. Evid. 615.

8. Sequestration of Witnesses.

The United States moves that all witnesses for the United States, other than those proposed above, and for the Defendants be sequestered. Federal Rule of Evidence 615.

Dated and electronically filed this 16th day of April, 2019.

RONALD A. PARSONS, JR.
United States Attorney

/s/ ANN M. HOFFMAN

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